

Federal Acquisition Regulation

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AUTHORITY: 40 U.S.C. 486 (c); 10 U.S.C. Chapter 137; 42 U.S.C. 2473 (c).

SOURCE: 60 FR 48238, Sept. 18, 1995, unless otherwise noted.

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.

As used in this part—

New means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including, but not limited to, performance, reliability, and life expectancy.

Reconditioned means restored to the original normal operating condition by readjustments and material replacement.

Recovered material has the meaning provided such term in 23.402.

Remanufactured means factory rebuilt to original specifications.

Virgin material means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

[62 FR 44810, Aug. 22, 1997]

EFFECTIVE DATE NOTE: At 62 FR 44810, Aug. 22, 1997, section 11.001 was revised, effective Oct. 21, 1997. For the convenience of the user, the superseded text is set forth as follows:

11.001 Definitions.

Material, as used in this part, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this part, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this part, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

Reconditioned, as used in this part, means restored to an earlier normal operating condition by readjustments and replacement of parts.

Remanufactured, as used in this part, means factory rebuilt to new equipment performance specification and unused subsequent to rebuilding.

11.002 Policy.

(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1), 10 U.S.C. 2377, 41 U.S.C. 253a(a), and 41 U.S.C. 264b, agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see part 6), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions to be performed;

(B) Performance required; or

(C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;

(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and

(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its acquisitions, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance imple-

menting this policy in formulating their requirements for acquisitions.

(c) To the extent practicable and consistent with subpart 9.5, potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see 7.101 and 7.105(a)(8)).

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), as amended, Executive Order 12873, dated October 20, 1993, and Executive Order 12902, dated March 8, 1994, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. Requiring activities shall prepare plans, drawings, specifications, standards (including voluntary standards), and purchase descriptions that consider the requirements set forth in part 23. Environmental objectives, such as pollution prevention (*e.g.*, promoting waste reduction, source reduction, energy efficiency and maximum practicable recovered material content) (see part 23) shall be considered when describing Government requirements for supplies and services, and when developing source selection factors for competitive negotiated acquisitions (see 15.304), when appropriate.

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

[60 FR 48238, Sept. 18, 1995, as amended at 61 FR 39192, July 26, 1996; 62 FR 263, Jan. 2, 1997; 62 FR 44810, Aug. 22, 1997; 62 FR 51230, Sept. 30, 1997]

EFFECTIVE DATE NOTES: 1. At 62 FR 44810, Aug. 22, 1997, in section 11.002, paragraph (d) was amended by revising the first sentence, effective Oct. 21, 1997. For the convenience of the user, the superseded text is set forth as follows: